IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.245 OF 2001
FROM
WRIT PETITION NO.471 OF 1999

M/S. CONSOLIDATED PNEUMATIC TOOLS
COMPANY (INDIA) LIMITED,
(Formerly known as Chicago
Pneumatic India Ltd. and now
known as Atlas Copco India Ltd.
L.B.S. Marg, Mulund,
Mumbai - 400 080. ..Appellant.
(Original Petitioner)

V/s.

1. THE PRESIDENT,
The Association of Engineering
Workers, 252, Janata Colony,
Ramnarayan Narkar Marg,
Ghatkopar (E), Mumbai 400 086 ..Respondent No.1
(Original Respondent No.1)

2. SHRI D.M.DESHMUKH,
Presiding Officer,
VIth Labour Court,
Mumbai 400 034 ..Respondent No.2
(Original Respondent No.2)

3. SHRI P.W.BHUYAR,
Presiding Officer,
VIth Labour Court,
Mumbai 400 034. ..Respondent No.3
(Original Respondent No.3)

Mr.P.C.Pawaskar, adv. for the Appellant.
Mr.N.M.Ganguli, adv. for the Respondent No.1.

CORAM : D.K.DESHMUKH &
J.H. BHATIA, JJ.
DATED : **23rd August, 2007.**

JUDGMENT: (Per J.H.Bhatia, J.)

1. The appeal is preferred by the employer against the dismissal of Writ Petition No.471 of 1999 by the

learned Single Judge as per the judgment dated 24th January, 2001. The learned Single Judge while dismissing the petition filed by the employer, had allowed the petition filed by the respondent no.1, which is an association of the workers.

2. To state in brief, one P.G.Sane was the workman working with the employer company since 20th February, 1974 as a machine operator. For the purpose of discharging his duties, like other workers, he was given 10 tokens. As and when he required any instrument, he could get the concerned instrument from the stores department on depositing a token . After completion of work, he would be required to deposit instrument in the stores department and take back the token. On 20th October, 1985 which was a day of Dasera festival, pooja was performed in the factory. At that time one assistant engineer Rane noticed that the workman, namely Sane, was having Vernier Calipper (For short the 'Instrument') wrapped in a paper bag. The said Rane asked the workman as to why he had not returned the said instrument in the stores department. The workman explained that on 19th October, 1985, he was on duty in the second shift and for his work he had taken the said instrument from the stores department, that after

completing the work he had started cleaning the machines for the purpose of making it ready for pooja on the next day, that he had kept the instrument on a small table while cleaning the machine and that he had forgotten to return the same. He also explained that he had noticed the instrument lying there only in the morning of 20th October, 1985 when he had come to the company for the duty. Thereafter, he had been to the stores department for returning the instrument but the stores department was found closed and nobody was there. Therefore, instrument was with him. After the pooja, the workman went to the stores department and returned the instrument. Rane Junior Engineer reported the matter to the Personnel Department and a charge-sheet was served on the workman that he had committed theft of the company's property, which is an act of subversive of discipline. The charge was denied by the workman as false, fabricated and an act of victimisation. Being not satisfied with the explanation, the company instituted a domestic enquiry. The enquiry officer found him guilty of misconduct of theft or dishonesty in connection with the employer's business or property within the establishment and also commission of an act subversive of good behaviour or of discipline of the establishment. On the basis of this report dated 23rd October, 1986, the company issued an order dated 12th

November, 1986 and dismissed the workman from the employment. The workman challenged the legality and propriety of the dismissal order and raised the industrial dispute and prayed for reinstatement with full backwages. The said industrial dispute was referred for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 by the State Government to the Labour Court. Association of workers/Respondent No.1 took up the matter on behalf of the workman. Both the parties led the evidence.

3. By an award (Part I) dated 5th January, 1994, the Labour Court held that enquiry was conducted in accordance with the legal provisions and the same was fair and proper. By an order dated 9th September, 1996, the labour Court held that finding on the charge of the misconduct is not justified by the evidence led during the course of the enquiry. However, the labour Court gave an opportunity to the company to lead additional/fresh evidence to justify the action taken by it. After that on behalf of the company, two witnesses, being Shri Brahma Bhatia Assistant Manager (Personnel Administration) and Shri Arun Manjaramkar Corporate Personnel Manager, came to be examined. Workman P.G.Sane examined himself in the defence. The final award was passed by the labour Court on 30th May, 1998

whereby the order of dismissal of the workman was quashed as illegal, improper and void. However, holding that though the workman had not committed offence of theft, his act of removing the instrument from the place of work was an act of dishonesty and, therefore, he was directed to be reinstated with 1/3 back wages.

4. While the company filed writ petition challenging the order of reinstatement, the workers association also filed a writ petition challenging the finding that the workman had committed an act of dishonesty and the direction to pay only 1/3rd backwages and not the full backwages. Both the petitions were heard together by the learned Single Judge of this Court. The learned Single Judge dismissed the petition filed by the company and allowed the petition of the workers association. The learned Single Judge held that there was no material to show that the workman had committed any act of dishonesty. The learned Single Judge also found that the workman was entitled to be reinstated with full backwages as there was no justification to direct to pay only 1/3rd backwages. In the result, the company was directed to reinstate the workman with full backwages with all consequential benefits permissible under the law. This order has been challenged in the present appeal.

5. Heard the learned counsel for both the parties. Perused the evidence led by both the parties before the enquiry officer as well as before the labour Court, also perused the award passed by the labour Court on 5th January, 1994, the order dated 9th September, 1996 as well as final award dated 30th May, 1998 and the impugned judgment in the writ petition.

6. The learned counsel for the company vehemently contended that the evidence on record is sufficient to hold that the workman had removed the instrument from the factory premises dishonestly with intent to commit theft and the explanation given by him after he was found in possession of the instrument is not acceptable. He contended that in view of the evidence, dismissal from service was justified. According to him, the labour Court as well as the learned Single Judge committed error in directing his reinstatement. According to him, the direction to pay full back wages can not be justified. On the other hand, the learned counsel for the respondent no.1 fully supported the impugned order of reinstatement with full back wages.

7. After perusal of the complete record, we are satisfied and there is no dispute that the enquiry was

conducted by following legal provisions and in that sense, it was fair and proper. By an order dated 9th September, 1996, the Labour Court answered the issue "Whether the findings of misconduct are justified by evidence led during the course of enquiry" in negative. The learned Judge observed as under:-

> "Considering the entire evidence, I find that there is serious doubt as to the commission of alleged misconduct by the workman. The finding that the charges are proved, is not justified by the evidence led during the course of the enquiry."

In view of this, the learned Labour Court gave an opportunity to the company to lead the additional/fresh evidence, if any, to justify the action taken by it. That order was challenged by the company by filing writ petition. However, that writ petition was dismissed by the Division Bench of this Court. Against that the company had preferred Special Leave Petition before the Supreme Court but it was also dismissed. Thus, the finding of the labour Court recorded on 9th September, 1996 has become final. Thus, it is clear that on the basis of evidence led during the domestic enquiry, the company could not prove that there was any act of misconduct committed by the workman. Therefore, it will be necessary to find out whether the evidence led by the

company before the enquiry officer and the additional evidence led before the labour Judge would be sufficient to prove the alleged misconduct on the part of the workman.

8. As far as the evidence of R.M.Rane, junior engineer, is concerned, it only shows that on 20th October, 1985 at about 11.25 a.m. he had seen the workman among the employees, who had assembled for Dasera pooja in the open space outside the gate of factory near the time office of the company. At that time, the workman was carrying Vernier Calliper wrapped in a paper bag. Noticing this, Rane asked the workman as to why he had taken the Vernier Calliper at the place of pooja. The workman replied that on 19th October, 1985 he was in second shift and he had forgotten to return the instrument. He had also told Rane that immediately after reporting for duty on 20th October, 1985, he had been to the stores department but it was locked and nobody was present there and therefore, he could not return the instrument immediately. Evidence of Mr.Rane does not go beyond this.

9. Another witness Prabhakar Pednekar was Assistant Storekeeper. He explained that every workman was provided with 10 tokens and as and when any workman

required any instrument from the stores department, he could obtain such instrument against the token to be deposited in the stores. Such token would be kept in place of relevant instrument and when the instrument was returned, it was kept on its place and the token would be returned to the workman. The instruments were kept in cupboard, which was duly locked. His evidence shows that on 19th October, 1985, the workman was on duty in the second shift from 3.15 p.m. to 11.45 p.m. On that day the workman had taken the instrument against the token. That instrument was necessary for the nature of job, which he was doing on that day. Pednekar has deposed that on 20th October because of Dasera pooja, the second shift was to start at 10.15 a.m. and accordingly he had come to duty at that time. He deposed that he and others, working in the stores department, closed all the cupboards at about 11.15 a.m. and came out for pooja. Thereafter, they returned to the stores at about 1.15 p.m. He deposed that Tool Stores In-charge Rane had asked him as to whether he had received back all the instruments including measuring instruments issued on 19th October, 1985 and whether they had issued any such instruments to any workman on 20th October, 1985. To this, Pednekar told Rane that all the instruments were received back, which were issued on 19th October, 1985 and that no instrument was

issued on 20th October, 1985. In the cross-examination Pednekar was asked if he could produce relevant records about the issue and return of the instruments. To this he replied that practice of maintaining record had commenced recently and was not invogue when this incident had occurred. However, he did not state specifically when this practice was commenced. Evidence of this person was recorded during the enquiry on 15th March, 1986.

10. If the evidence of Pednekar is to be believed, all the instruments were received back on 19th October, 1985 and no instrument was issued to any workman on 20th October, 1985. It is material to note that there is no evidence on record to show that on 20th October, 1985, the workman had been to the stores and had collected any instrument or material from there. It is not even the case of the company that the lock of the store room or the lock of the cupboards in which the instruments were kept were found broken or there was anything to show that they were opened by some duplicate keys. No witness was examined to show that in the morning of 20th October, 1985, the workman had been to the stores room or was seen near the store room. If all the instruments were received back on 19th October, 1985, the company is unable to establish how that instrument was found in the

hands of the workman on 20th October, 1985 and particularly at the time of pooja when there is no evidence that he had taken the same from the stores on 20th October nor that he had any opportunity to collect the same from stores on 20th October.

11. The workman had specifically deposed that on 19th October, 1985, he had collected the instrument from the stores department by depositing a token and after completing his work, he had kept the instrument on a small table and after he had cleaned the machines for the purpose of making it ready for pooja on the next day he had forgotten to pick up the instrument and to return the same to the stores department. It is material to note that size of the instrument was just about 6 inches and as per the evidence, the table on which it was kept was also of 6 inches height and, therefore, it might have lost the sight of the workman when he left the factory premises. So, according to him, he had simply forgotten the instrument in the factory while leaving on 19th October, 1985 and he noticed it on 20th October, 1985 when he came back on his duty. According to him, in the morning he went towards the store room to return that instrument but it was found locked and nobody was present, therefore, he could not return it. Therefore, he took it alongwith him and as being a Brahmin he was

asked to sit for the pooja, he directly went to the place of pooja alongwith instrument in his hands.

12. Out of the two witnesses examined before the labour Court, evidence of only Brahma Bhatia appears to be relevant. Other witness had no personal information about the incident. Brahma Bhatia also explained the procedure about the issue of instruments and about returning of the same. He deposed that there was a complaint from tool stores section that the present workman had taken a Vernier Calliper in the second shift on 19th October, 1985 and the same was not returned by him on that day. He came to know about this fact on 20th October, 1985. This statement of Brahma Bhatia is consistent with the stand taken by the workman that he had taken the instrument in the second shift of 19th October and had not returned the same on that day. This evidence is inconsistent with the evidence of Pednekar that the instrument was returned on 19th October, 1985. It is material to note that Pednekar informed the tool department in writing for the first time on 23rd October, 1985 that the instrument was returned on 19th October, 1985 by the workman. Before that there was no such writing and no documentary evidence was produced to show that instrument was actually returned on 19-10-1985. In view of the discrepancy in the evidence

of Pednekar and the evidence of Brahma Bhatia, it must be held that the company could not establish satisfactorily that the instrument was actually returned by the workman on 19th October, 1985 and that he had dishonestly taken away the same from the stores department on the next day. In fact the evidence of Brahma Bhatia corroborates the plea of the workman that he had not returned the instrument on 19th October, 1985 because he had forgotten to do so and he was found with that instrument on 20th October, 1985. As per evidence of the workman, later on, on the same day, he returned that instrument in the stores department and collected his token from the stores supervisor Shagir Ahmed. It is material to note that Shagir Ahmed was not examined by the company. From the evidence of Arun Manjaramkar, it appears that one Kurdekar and one Joshi were directly concerned with small parts machine shop department but none of them was examined. Manjaramkar admitted that reports Exhibits 10 to 12 were submitted in respect of this incident and in none of these reports, there was any mention that the workman had stolen vernier calliper from the company on 20th October, 1985.

13. Taking into consideration, the evidence in its totality, the plea of the workman appears to be probable and acceptable. He was working in the same department

since 1974 and he had unblemished record. He has explained the circumstances in which he had forgotten to return the instrument to the stores department after his work was over on 19th October, 1985. According to him while leaving the factory, he had forgotten the instrument kept on a small table and he noticed it on the next day morning. It is not impossible or improbable for any humanbeing. Taking into consideration the evidence of Brahma Bhatia, the evidence of Pednekar does not appear to be reliable. If Pednekar is to be believed that the instrument was actually returned on 19th October, 1985, it has to be held that the instrument was taken away from the stores department on 20th October, 1985 but Manjaramkar admitted that in three reports Exhibits 10, 11 and 12, there was no mention that instrument was stolen away or taken away on 20th October, 1985. There is also no direct or circumstantial evidence to show that the workman had taken away the instrument in the morning of 20th October, 1985 from the stores department. Taking into consideration these circumstances, we find that the learned Single Judge has rightly came to conclusion that there was no evidence of theft or dishonestly taking away of the instrument by the workman.

14. It may be noted that in the final award, the

learned labour Judge observed that the workman had not committed theft but had dishonestly taken away the instrument from the stores. As per the definition of theft in Section 378 of the I.P.C. whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. In view of this definition of theft, the findings and the observations of the learned labour Judge in the final award are inconsistent. On one hand, he says that workman had dishonestly taken away the instrument and on the other, he held that he had not committed theft. The observation of the learned labour Judge that the workman had dishonestly taken away the instrument from the stores is not supported by the facts, circumstances and the evidence on record.

15. Once the company has failed to prove the charges against the workman, naturally the consequence of the same should be reinstatement in the service. The learned labour Judge had also directed reinstatement with 1/3 backwages but record reveals that the workman was not gainfully employed anywhere and there was no justification not to grant full backwages to him. Therefore, the learned Single Judge allowed the petition of the workman and directed the company to reinstate the

workman with full backwages with all other consequential benefits. We find no fault with the said direction. In view of the circumstances, there is no merit in the appeal.

16. In the result, appeal stands dismissed.

(D.K.Deshmukh, J.)

(J.H.Bhatia, J.)